

ADOT JPA File No.: JPA 05-052
AG Contract No.: KR05-0841TRN
Project No.: STP-085-B (009) A
Project: Roadway Improvements
Section: SR 85, Milepost 139.15-142.45
TRACS: H5955 05C
Budget Source Item No.: 15104

AGREEMENT

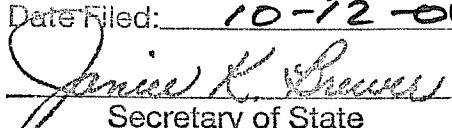
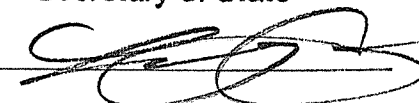
BETWEEN
THE STATE OF ARIZONA
AND
THE ARIZONA OPEN LAND TRUST

THIS AGREEMENT is entered into this date October 12 of 2005, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the ARIZONA OPEN LAND TRUST, acting by and through its Board of Directors, ("AOLT").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes § 28-408 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.
2. AOLT is empowered by its Board of Directors to enter into this Agreement and has resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of AOLT.
3. The State is contemplating a roadway improvement project between milepost (MP) 139.15 and MP 142.45 on State Route 85, north of the town of Gila Bend, Arizona to convert from a two-lane to a four-lane divided highway with an open median between the northbound and southbound traffic, hereinafter referred to as "Project 5". These improvements will permanently impact approximately 2.46 acres of jurisdictional waters. The Army Corps of Engineers has determined, under Section 404 of the Clean Water Act (33 U.S.C. 1344) that the State transfer a one time in-lieu mitigation fee payment in the amount of \$12,800.00 for Project 5, to AOLT to continue landscape restoration efforts with landowners and to improve riparian habitat on the West Branch of the Santa Cruz River.

THEREFORE, in consideration of the mutual covenants expressed herein, it is agreed as follows:

NO. 27780
Filed with the Secretary of State
Date Filed: 10-12-05

Secretary of State
By: 

II. SCOPE OF WORK

1. AOLT shall:

a. Upon execution of this Agreement, invoice the State for the cost of the mitigation effort, in the amount of \$12,800.00 for Project 5.

b. Dedicate these fee payments and conduct all necessary negotiations to provide alternative water sources and/or conduct landscape restoration to improve riparian habitat on the West Branch of the Santa Cruz River, as shown on Exhibit "A" attached hereto and made a part hereof.

c. Request for payment shall be submitted with the "ADOT Progress Payment Report" form (attached). Electronic forms can be requested through Joint Project Administration, at the address provided under Section III. Paragraph 9.

2. The State shall:

a. Upon receipt of and approval of an invoice by AOLT, the State will remit to AOLT an amount of \$12,800.00 for Project 5.

b. Upon execution of this Agreement, ADOT (Environmental & Enhancement Group) will provide the U.S. Army Corps of Engineers a copy of the check and transmittal letter that shall serve to demonstrate the successful transfer of the mitigation.

III. MISCELLANEOUS PROVISIONS

1. The terms, conditions and provisions of this Agreement shall remain in full force and effect until final accounting. This Agreement may be cancelled prior to the disbursement of funds transferred under this Agreement, upon thirty-days (30) written notice to either party.

2. The parties to this Agreement agree that the State of Arizona shall be indemnified and held harmless by AOLT for the vicarious liability of the State as a result of entering into this contract. However, the parties further agree that the State of Arizona shall be responsible for its own negligence. Each party to this Agreement is responsible for its own negligence.

3. This Agreement shall become effective upon filing with the Secretary of State.

4. This Agreement may be cancelled in accordance with Arizona Revised Statutes § 38-511.

5. In the event of any controversy, which may arise out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes § 12-1518.

6. The provisions of Arizona Revised Statutes § 35-214 are applicable to this contract.

7. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

8. Non-Availability of Funds: Every payment obligation of the State under this contract is conditioned upon the availability of funds appropriated or allocated for the payment of such

obligation. If funds are not allocated and available for the continuance of this contract, this contract may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

9. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation
Joint Project Administration
205 South 17th Avenue, Mail Drop 616E
Phoenix, AZ. 85007
FAX (602) 712-7424

Arizona Open Land Trust, Inc.
Attn: Executive Director
3127 N. Cherry Avenue
Tucson, AZ 85719

10. Attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this Agreement and that the Agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written

THE ARIZONA OPEN LAND TRUST

STATE OF ARIZONA

Department of Transportation

By

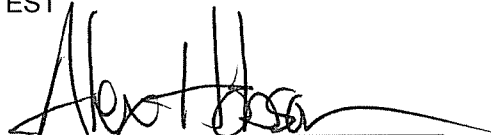

DIANA BARNES FRESHWATER
Executive Director

By


SUSAN TELLEZ
for Contract Administrator

ATTEST

By


ALEX HOBSON
Duffield, Young Adamson, & Alfred, P.C.

Date



EXHIBIT A

Work Plan ADOT In-lieu mitigation for SR-85 Project #5 – Mileposts 139.15 – 142.45 Arizona Open Land Trust October 2004

Project Location

West Branch, Santa Cruz River, Pima County, Arizona

Time Frame

Commencement March 1, 2005 and completion October 1, 2005

Project Personnel

Diana Freshwater, Arizona Open Land Trust

Vanessa Bechtol, Arizona Open Land Trust

[Project partners in ongoing work on the West Branch include: Phil Rosen (herpetologist), Mark Briggs (restoration ecologist), Ann Phillips (Tucson Audubon Society), Beryl Baker (landowner), and Doug Koppinger (Trees for Tucson)]

Project Goal

Construct refugia ponds and continue landscape restoration efforts with landowners to enhance habitat on the West Branch of the Santa Cruz River.

Project Activities

1. Construct a refugia pond to support riparian habitat and provide breeding ground for amphibians.
2. Provide native trees and drought tolerant plants for revegetation.
3. Provide water supply to support threatened vegetation along the West Branch floodplain and channel bank.

Project Funding

Arizona Open Land Trust – ADOT in-lieu mitigation fees: \$12,800

Refugia Pond:	\$3,000
Revegetation and water:	\$7,940
Administration of Restoration Activities:	<u>\$1,860</u>
TOTAL PROJECT COST:	\$12,800

Schedule of Activities

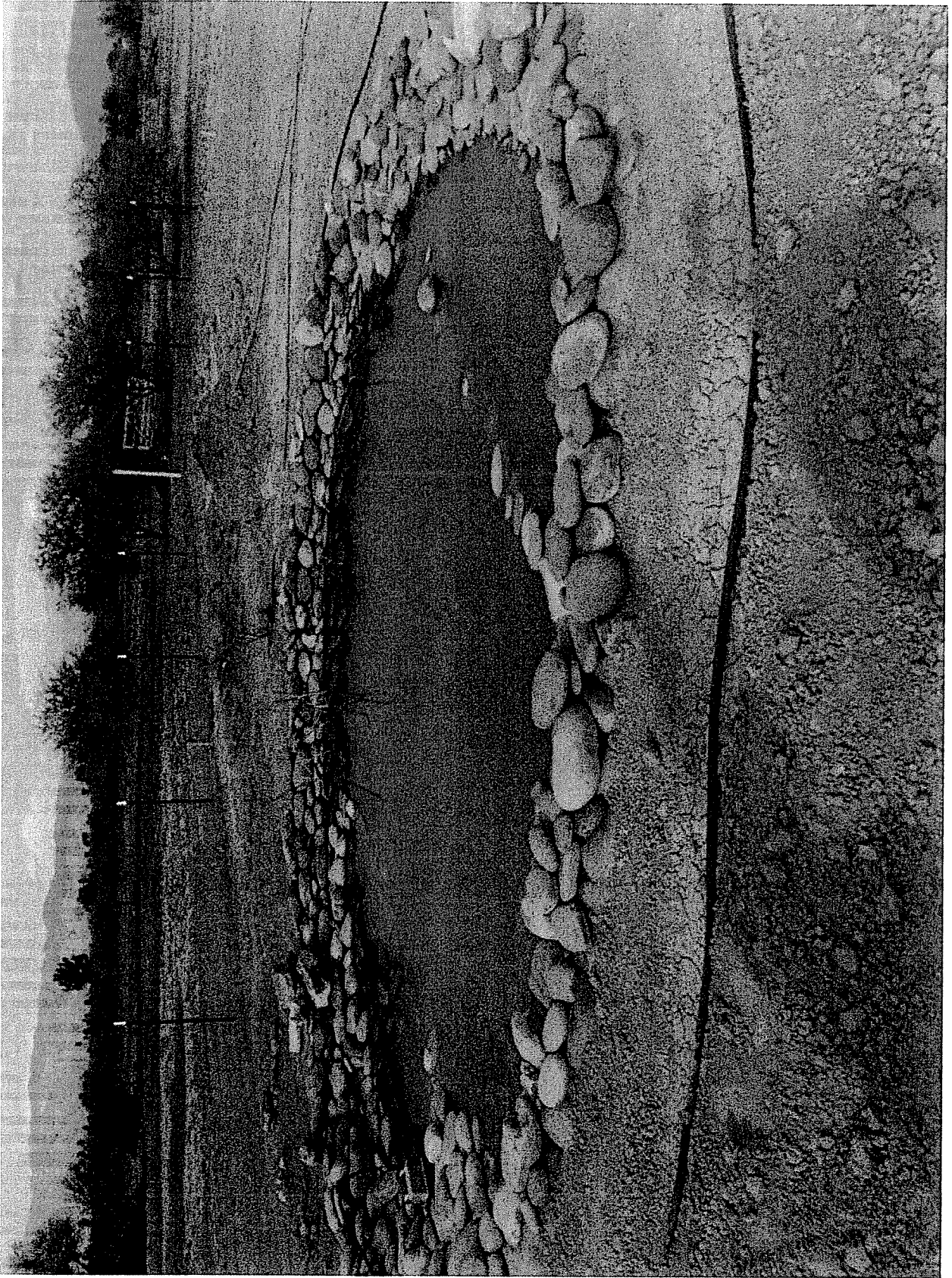
ACTIVITY	M	A	M	J	J	A	S	O
Refugia pond construction	X	X	X	X				
Revegetation with drought tolerant plants			X	X	X	X	X	X
Research, obtain, and apply water supply			X	X	X	X	X	X
Reporting to ADOT								X

Reporting to ADOT

The following items will be provided in a concluding report to ADOT to be submitted October, 2005:

- Status of refugia pond project
- Summary of revegetation conducted and water delivery to West Branch
- Budget tracking for AOLT activities supported by ADOT



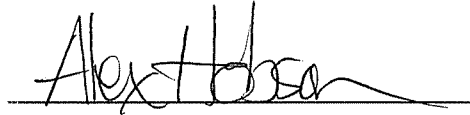


ATTORNEY APPROVAL FORM

FOR THE ARIZONA OPEN LAND TRUST

I, Alex Hobson, am legal counsel for the ARIZONA OPEN LAND TRUST, INC. I have reviewed the above referenced agreement between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and the ARIZONA OPEN LAND TRUST, INC., and certify that the ARIZONA OPEN LAND TRUST, INC., by and through authority granted by its Board of Directors delegated to its Executive Director, Diana Barnes Freshwater, has authority to enter in to the said Agreement.

DATED this _____ day of _____, 2005.

A handwritten signature in black ink, appearing to read "Alex Hobson", written over a horizontal line.

Alex Hobson
Duffield Young Adamson, P.C.
3430 East Sunrise Drive, Suite 200
Tucson, Arizona 85718-3236
Legal counsel for the Arizona Open Land Trust, Inc.



STATE OF ARIZONA
OFFICE OF THE ATTORNEY GENERAL
CIVIL DIVISION
TRANSPORTATION SECTION
MEMORANDUM

Jeffrey T. Murray
Assistant Attorney General

Direct: 602-542-8859
Fax: 602-542-3646


INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. KR05-0841TRN (**JPA 05-052**), an Agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED September 29th, 2005.

TERRY GODDARD
Attorney General


JEFFREY T. MURRAY
Assistant Attorney General
For SUSAN E. DAVIS
Assistant Attorney General
Transportation Section

JTM:dgr
Attachment
926870